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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/674,116

Filing Date: September 29, 2003

Appellant(s): DRONZEK, PETER J.

James Costigan
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed February 3, 2010 appealing from the Office action mailed September 3, 2009.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 25-36, 38-47, 49, and 50 are rejected. Claim 48 is withdrawn from consideration.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN"

REJECTIONS.” New grounds of rejection (if any) are provided under the subheading “NEW GROUNDS OF REJECTION.”

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner.

The previous double patenting rejections are withdrawn. The terminal disclaimers filed on 2/3/10 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US 6,663,746 and US 6,306,242 has been reviewed and are accepted. The terminal disclaimers have been recorded.

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant’s brief.

(8) Evidence Relied Upon

Pages 4-6 Appellants Specification	Admitted Prior Art	
US 5,885,678	Malhotra	3-1999
US 5,422,175	Ito et al.	6-1995
US 3,296,723	Gobel	1-1965
US 4,440,884	Jannusch	4-1984
US 4,978,436	Kelly	12-1990

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 25, 47, 49, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art (Specification pages 4-6) in view of Malhotra (U.S. Patent 5,885,678) or Ito et al. (U.S. Patent 5,422,175).

The admitted prior art discloses a conventional method of labeling a glass or plastic container by means of a water based adhesive through a method comprising selecting a paper based label that will readily feed from a label magazine and will allow a water based adhesive to migrate into the label, placing the label in the label magazine to form a stack of labels, feeding the label from the label magazine by contacting a back side of the label in the stack of labels with a pallet which applies the water based adhesive to the label to form a fastenable label, fastening the label to the container, and allowing the label to dry/cure on the container (Specification page 5, line 6 to page 6, line 10). The admitted prior art is silent as to the label comprising a microvoided polymer. It was known in the labeling art that label materials include any of paper, microvoided polymer such as microvoided polypropylene, etc. as shown by Malhotra (Column 6, lines 30-64). Ito specifically discloses a microvoided polymeric label material as a substitute for paper comprising an inner microvoided polymeric base including surface microvoids and an outer layer easily written on, the label having a high definition for printing, high durability, appearance of high quality, dimensional stability to moisture absorption, etc. (Column 1, lines 6-10 and Column 2, lines 18-28 and 37-42 and Column 3, lines 18-20 and Column 12, lines 7-10 and 23-29). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use as the label material in the admitted prior art any of those known as

suitable in the art for the same such as microvoided polymer an alternative to paper as shown by Malhotra only the expected results being achieved. Further or alternatively, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use as the label material in the method taught by the admitted prior art the microvoided polymeric label taught by Ito as a substitute for paper having a high definition for printing, high durability, appearance of high quality, dimensional stability to moisture absorption, etc. The microvoided polymeric labels taught by Malhotra or Ito are considered to allow a water based adhesive to migrate into the label the same as appellants.

Regarding the limitation that the label is a “patch label”, it is considered well taken in the art of labeling that there are two types of labels which include wrap labels which provided a 360 degree wrap around the container and cut patch labels with less than 360 degree wrap as shown for example by the admitted prior art (Page 4, lines 21-25). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use as the label taught by the admitted prior art as modified by Malhotra or Ito either of those well known to one of ordinary skill in the art such as a wrap label or a patch label as evidenced by the admitted prior art depending on the amount of information conveyed by the label, the decorative effect of the label, etc.

Regarding claim 47, Malhotra teaches the microvoided polymer is polypropylene, and Ito teaches the microvoided polymeric base includes polyolefin-type resins wherein polypropylene is specifically noted in the background of Ito (Column 1, lines 62-66 and Column 3, lines 65-66). It would have been obvious to one of ordinary skill in the art the time the invention was made to use as the polyolefin component of the microvoided polymeric base taught by the admitted prior

art as modified by Ito any of the particular polyolefins suggested such as polypropylene by the background of Ito as only the expected results would be achieved.

Regarding claims 49 and 50, Ito specifically suggests the label has a density, i.e. specific gravity, less than 0.9 (See Example 1).

Claims 25, 47, 49, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ito in view of the admitted prior art.

Ito discloses a microvoided polymeric label material as a substitute for paper comprising an inner microvoided polymeric base including surface microvoids and an outer layer easily written on, the label having a high definition for printing, high durability, appearance of high quality, dimensional stability to moisture absorption, etc. Ito is silent as to any specific method and adhesive for using the material as a label. The admitted prior art discloses a conventional method of labeling a glass or plastic container by means of a water based adhesive using a paper label as more fully described above. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the label material taught by Ito (a substitute for paper) to label glass or plastic containers using a water based adhesive as taught by the admitted prior art evidencing a known technique for applying paper labels to form glass or plastic containers having labels with a high definition for printing, high durability, appearance of high quality, dimensional stability to moisture absorption, etc. The microvoided polymeric labels taught Ito are considered to allow a water based adhesive to migrate into the label the same as appellants.

Regarding the limitation that the label is a “patch label”, it is considered well taken in the art of labeling that there are two types of labels which include wrap labels which provided a 360

degree wrap around the container and cut patch labels with less than 360 degree wrap as shown for example by the admitted prior art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use as the label taught by Ito as modified by the admitted prior art either of those well known to one of ordinary skill in the art such as a wrap label or a patch label as evidenced by the admitted prior art depending on the amount of information conveyed by the label, the decorative effect of the label, etc.

Regarding claim 47, Ito teaches the microvoided polymeric base includes polyolefin-type resins wherein polypropylene is specifically noted in the background of Ito (Column 1, lines 62-66 and Column 3, lines 65-66). It would have been obvious to one of ordinary skill in the art the time the invention was made to use as the polyolefin component of the microvoided polymeric base taught by Ito any of the particular polyolefins suggested such as polypropylene by the background of Ito as only the expected results would be achieved.

Regarding claims 49 and 50, Ito specifically suggests the label has a density, i.e. specific gravity, less than 0.9 (See Example 1).

Claims 25-27, 30-36, 38, 45-47, 49, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over in Gobel (U.S. Patent 3,296,723) in view of Malhotra or Ito and the admitted prior art.

Gobel discloses a method of labeling a glass, plastic, or metal container or surface with a printable label through a method comprising selecting a paper or polymeric patch label (4), applying an adhesive hydrophilic coating (3) to the label, and drying the coating to form a label having a hydrophilic coating. Gobel further teaches using the label by applying a water based adhesive (6) to the hydrophilic coating to form a fastenable polymeric label, and fastening the

label to the container or surface (Figure 3 and Column 2, lines 9-16 and 53-65 and Column 3, lines 1-6 and Column 4, lines 33-36). Gobel is silent as to the label material comprising a microvoided polymeric material, it being noted Gobel is not limited to any particular label material and suggest as exemplary polyvinylchloride in addition to other conventional materials such as paper. It was known in the labeling art that label materials include any of paper, polyvinylchloride, and microvoided polymer such as microvoided polypropylene as shown by Malhotra (Column 6, lines 30-64). Ito specifically discloses a microvoided polymeric label material as a substitute for paper comprising an inner microvoided polymeric base including surface microvoids and an outer layer easily written on, the label having a high definition for printing, high durability, appearance of high quality, dimensional stability to moisture absorption, etc. (Column 1, lines 6-10 and Column 2, lines 18-28 and 37-42 and Column 3, lines 18-20 and Column 12, lines 7-10 and 23-29). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use as the label material in Gobel any of those materials known as suitable in the art for the same purpose such as microvoided polymer as shown by Malhotra. Further or alternatively, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use as the label material in the method taught by Gobel the microvoided polymeric label taught by Ito having a high definition for printing, high durability, appearance of high quality, dimensional stability to moisture absorption, etc. The microvoided polymeric labels taught by Malhotra or Ito are considered to allow a water based adhesive to migrate into the label the same as appellants.

Regarding the limitation that the label “will readily feed from a label magazine”, “placing said microvoided polymeric patch label in a label magazine and feeding said microvoided

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polymeric patch label from said magazine to a point where a water based adhesive is applied to said microvoided polymeric patch label by gluing a back side of said label be contacting said label with a pallet which is pressed against the first label in a stack of labels to form a fastenable polymeric patch label”, and “allowing said polymeric label to dry on said glass, plastic or metal surface or container”, Gobel does not specifically teach any specific technique for applying the water based adhesive to the label having a hydrophilic coating, it being noted Gobel is not limited to any particular technique. The admitted prior art as more fully described above discloses a conventional method of labeling a glass or plastic container by means of a water based adhesive applied to the first label of a label stack in a label magazine. It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the water based adhesive to the hydrophilic coated label and apply the label to the container as taught by Gobel using the conventional method as shown by the admitted prior art only the expected results being achieved.

Regarding the limitation that the label is a “patch label”, Gobel appears to describe a patch label (Column 4, lines 33-36), and as such is considered to meet the limitation. In the event it is shown Gobel does not necessarily teach a patch label the following rejection would apply, it being noted Gobel is not limited to any particular type of label. It is considered well taken in the art of labeling that there are two types of labels which include wrap labels which provided a 360 degree wrap around the container and cut patch labels with less than 360 degree wrap as shown for example by the admitted prior art (Page 4, lines 21-25). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use as the label taught by Gobel either of those well known to one of ordinary skill in the art such as a wrap label

or a patch label as evidenced by the admitted prior art depending on the amount of information conveyed by the label, the decorative effect of the label, etc.

Regarding claim 32, the hydrophilic coating applied to the label as taught by Gobel is considered applied with 100% coverage (See the Figures).

Regarding claim 33, Gobel does not specifically teach the thickness of the water based adhesive. Absent any unexpected results, it would have been obvious to one of ordinary skill in the art at the time the invention was made to experimentally determine the thickness of the water based adhesive required in Gobel to achieve a good bond between the label and the container or surface as doing so would have required nothing more than ordinary skill and routine experimentation.

Regarding claim 34, Ito teaches the polymeric label is a co-extruded film including polyester and coloring agent (Column 5, lines 13-17 and Column 9, lines 17-20).

Regarding claim 35, Ito teaches the layer easily written on that is laminated to the base considered a low density polymeric label surface may include printed indicia, e.g. a bar code, wherein it is considered obvious to one of ordinary skill in the art at the time the invention was made to use as the printed indicia on the layer easily written on taught by Gobel any decorative indicia including reverse printed indicia as only the expected results would be achieved.

Regarding claims 36 and 38, Ito teaches the polymeric label includes an outer layer easily written on that is roughened which is considered an adhesion promoting layer to promote indicia adhesion (Column 12, lines 7-10). Further, Ito teaches optionally including an inner layer of the same type which is considered a tie layer to the hydrophilic layer (Column 3, lines 15-18). It being further noted tie layers and primer are considered well known in the art for adhesion

promoting such that it would have been obvious to one of ordinary skill in the art at the time the invention was made to include on either surface of the label base taught by Gobel as modified by Malhotra or Ito a well known adhesion promoting tie layer or primer.

Regarding claims 45 and 46, Gobel teaches the hydrophilic layer is a derivative of polyacrylic acid wherein absent any unexpected results it would have been obvious to one of ordinary skill in the art at the time the invention was made to use any of the well known derivatives of polyacrylic acid such as carboxylated sodium polyacrylate.

Regarding claim 47, Malhotra teaches the microvoided polymer is polypropylene, and Ito teaches the microvoided polymeric base includes polyolefin-type resins wherein polypropylene is specifically noted in the background of Ito (Column 1, lines 62-66 and Column 3, lines 65-66). It would have been obvious to one of ordinary skill in the art the time the invention was made to use as the polyolefin component of the microvoided polymeric base taught by Gobel as modified by Ito art any of the particular polyolefins suggested such as polypropylene by the background of Ito as only the expected results would be achieved.

Regarding claims 49 and 50, Ito specifically suggests the label has a density, i.e. specific gravity, less than 0.9 (See Example 1).

Claims 28, 29, 43, and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gobel, Malhotra or Ito, and the admitted prior art as applied to claims 25-27, 30-36, 38, 45-47, 49, and 50 above, and further in view of Jannusch (U.S. Patent 4,440,884).

Regarding claims 28, 29, and 44, Gobel, Malhotra or Ito, and the admitted prior art as applied above teach all of the limitations in claims 28, 29, and 44 except for a specific teaching of the water based adhesive, which is considered coated/added to the hydrophilic layer, as

including a catalyst, it being noted Gobel is not limited to any particular water based adhesive and suggest a water based gum adhesive. Jannusch discloses a water based adhesive which maintains a strong bond between a label and an object to which it is attached wherein the adhesive comprises gum, starch, casein, etc. and includes a crosslinking catalyst to provide a quick bond (Column 1, lines 5-10 and Column 3, lines 36-51). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use as the water based adhesive in Gobel as modified by Malhotra or Ito and the admitted prior art the water based adhesive including gum, starch, or casein shown by Jannusch to strongly bond the label to the container.

Regarding claim 43, Gobel, Malhotra or Ito, and the admitted prior art as applied above teach all of the limitations in claim 43 except for a specific teaching of the hydrophilic layer including humectants. It is considered well taken in the art that a hydrophilic polymeric composition include humectants to control its viscosity, i.e. curl control and layflat properties, wherein Jannusch are exemplary of a hydrophilic composition including humectants to control the viscosity and bond strength of the composition (Column 3, lines 63-68 and Column 4, lines 5-14). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include in the hydrophilic layer taught by Gobel as modified by Malhotra or Ito and the admitted prior art humectants as shown by Jannusch to control the viscosity and bond strength of the composition.

Claims 39-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gobel, Malhotra or Ito, and the admitted prior art as applied to claims 25-27, 30-36, 38, 45-47, 49, and 50 above, and further in view of Kelly (U.S. Patent 4,978,436).

Gobel, Malhotra or Ito, and the admitted prior art as applied above teach all of the limitations in claims 39-42 except for a specific teaching of a protective coating placed over the printed indica on the outer layer, e.g. a bar code label. Kelly discloses a method wherein a protective coating layer including slip aids is placed on a substrate that is used as a label wherein the coating layer has slip properties that facilitates use of the coating layer on a high speed packaging apparatus (Column 1, lines 16-30). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include over the outer layer of the label taught by Gobel as modified by Malhotra or Ito and the admitted prior art the protective coating shown by Kelly to provide optimum high speed application of the label.

Claims 26, 27, 30-36, 38, 45 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ito and the admitted prior art as applied to claims 25, 47, 49, and 50 above, and further in view of Gobel.

Ito and the admitted prior art as applied above teach all of the limitations in claims except for a teaching of including a hydrophilic layer. Gobel discloses a method of labeling a glass, plastic, or metal container or surface with a printable label through a method comprising selecting a paper or polymeric patch label and applying a hydrophilic coating to the label. Gobel teaches the label is attached to the container or surface by applying a water based adhesive to the hydrophilic coating to form a fastenable polymeric label and fastening the label to the container or surface. Gobel teaches the hydrophilic coating prevents any tendency to curl, any tendency to exhibit stains, or any tendency of uneven or otherwise impaired adhesion due to partial repulsion of the water based adhesive by the paper or polymeric label (Column 3, lines 1-5). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include in

Ito as modified by the admitted prior art a hydrophilic coating between the microvoided polymeric patch label and water based adhesive as shown by Gobel to prevent any tendency to curl, any tendency to exhibit stains, or any tendency of uneven or otherwise impaired adhesion due to partial repulsion of the water based adhesive by the paper or polymeric label.

Regarding claim 32, the hydrophilic coating applied to the label as taught by Gobel is considered applied with 100% coverage (See the Figures).

Regarding claim 33, the admitted prior art does not specifically teach the thickness of the water based adhesive. Absent any unexpected results, it would have been obvious to one of ordinary skill in the art at the time the invention was made to experimentally determine the thickness of the water based adhesive required in Ito as modified by the admitted prior art and Gobel to achieve a good bond between the label and the container or surface as doing so would have required nothing more than ordinary skill and routine experimentation.

Regarding claim 34, Ito teaches the polymeric label is a co-extruded film including polyester and coloring agent (Column 5, lines 13-17 and Column 9, lines 17-20).

Regarding claim 35, Ito teaches the layer easily written on that is laminated to the base considered a low density polymeric label surface may include printed indicia, e.g. a bar code, wherein it is considered obvious to one of ordinary skill in the art at the time the invention was made to use as the printed indicia on the layer easily written on taught by Ito any decorative indicia including reverse printed indicia as only the expected results would be achieved.

Regarding claims 36 and 38, Ito teaches the polymeric label includes an outer layer easily written on that is roughened which is considered an adhesion promoting layer to promote indicia adhesion (Column 12, lines 7-10). Further, Ito teaches optionally including an inner layer of the

same type which is considered a tie layer to the hydrophilic layer (Column 3, lines 15-18). It being further noted tie layers and primer are considered well known in the art for adhesion promoting such that it would have been obvious to one of ordinary skill in the art at the time the invention was made to include on either surface of the label base taught by Ito a well known adhesion promoting tie layer or primer.

Regarding claims 45 and 46, Gobel teaches the hydrophilic layer is a derivative of polyacrylic acid wherein absent any unexpected results it would have been obvious to one of ordinary skill in the art at the time the invention was made to use any of the well known derivatives of polyacrylic acid such as carboxylated sodium polyacrylate.

Claims 28, 29, 43, and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ito, the admitted prior art and Gobel as applied to claims 26, 27, 30-36, 38, 45 and 46 above, and further in view of Jannusch.

Regarding claims 28, 29, and 44, Ito, the admitted prior art and Gobel as applied above teach all of the limitations in claims 28, 29, and 44 except for a specific teaching of the water based adhesive, which is considered coated/added to the hydrophilic layer, as including a catalyst, it being noted the admitted prior art is not limited to any particular water based adhesive and suggest a water based gum adhesive. Jannusch discloses a water based adhesive which maintains a strong bond between a label and an object to which it is attached wherein the adhesive comprises gum, starch, casein, etc. and includes a crosslinking catalyst to provide a quick bond. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use as the water based adhesive in Ito as modified by the admitted prior

art and Gobel the water based adhesive including gum, starch, or casein shown by Jannusch to strongly bond the label to the container.

Regarding claim 43, Ito, the admitted prior art and Gobel as applied above teach all of the limitations in claim 43 except for a specific teaching of the hydrophilic layer including humectants. It is considered well taken in the art that a hydrophilic polymeric composition include humectants to control its viscosity, i.e. curl control and layflat properties, wherein Jannusch are exemplary of a hydrophilic composition including humectants to control the viscosity and bond strength of the composition (Column 3, lines 63-68 and Column 4, lines 5-14). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include in the hydrophilic layer taught by Ito as modified by the admitted prior art and Gobel humectants as shown by Jannusch to control the viscosity and bond strength of the composition.

Claims 39-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ito, the admitted prior art and Gobel as applied to claims 26, 27, 30-36, 38, 45 and 46 above, and further in view of Kelly.

Ito, the admitted prior art and Gobel as applied above teach all of the limitations in claims 39-42 except for a specific teaching of a protective coating placed over the printed indica on the outer layer, e.g. a bar code label. Kelly discloses a method wherein a protective coating layer including slip aids is placed on a substrate that is used as a label wherein the coating layer has slip properties that facilitates use of the coating layer on a high speed packaging apparatus (Column 1, lines 16-30). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include over the outer layer of the label taught by Ito as modified

by the admitted prior art and Gobel the protective coating shown by Kelly to provide optimum high speed application of the label.

(10) Response to Argument

Appellants argue on page 5,

“At page 4 of the specification, beginning at line 10, there is a discussion of the use of hot melt adhesives in the application of labels that extends to page 5, line 5. The discussion of the use of hot melt adhesives does not constitute the admission that: “The admitted prior art discloses a conventional method of labeling a glass or plastic container by means of a water based adhesive through a method comprising selecting a paper or polymeric label that will readily feed from a label magazine, placing the label in the ;label magazine, feeding the label from the label magazine to a label holder which applies the water based adhesive to the label to form a fastenable label, fastening the label to a container and allowing the label to dry/cure on the container.”.

It was never asserted that page 4 of the specification and the discussion of hot melt adhesives was an admission regarding a conventional method of labeling with a water based adhesive. The admission regarding the conventional method of labeling with a water based adhesive is clearly set forth at page 5, line 6 to page 6, line 10.

Appellants further argue on page 6,

“Beginning at page 5, lines 6-26, the specification discusses the application of “paper based cut patch labels, using a water based adhesive and notes that “the cut label techniques work well with “paper based substrates” because the wet adhesive wicks or absorbs into the paper and allows the “moisture to be absorbed by and dry through the paper base”. At line 27, the applicant stated that “This technique (referring to the use of a water based adhesive on a paper base) “will not work with non-porous polymeric label substrates as the adhesives cannot dry thru (wick into) the *polymeric substrate*”. These statements cannot be interpreted as an admission that: “The admitted prior art discloses a conventional method of labeling a glass or plastic container by means of a water based adhesive through a method comprising selecting a paper or polymeric label that will readily feed from a label magazine, placing the label in the ;label magazine, feeding the label from the label magazine to a label holder which applies the water based adhesive to the label to form a fastenable label, fastening the label to a container and allowing the label to dry/cure on the container.”.

Appellants are mischaracterizing what has been taken as admitted prior art in the final rejection. As set forth above in the rejection and the same as that set forth in paragraph 4 of the final rejection mailed 9/3/09:

The admitted prior art discloses a conventional method of labeling a glass or plastic container by means of a water based adhesive through a method comprising selecting a paper based label that will readily feed from a label magazine and will allow a water based adhesive to migrate into the label, placing the label in the label magazine to form a stack of labels, feeding the label from the label magazine by contacting a back side of the label in the stack of labels with a pallet which applies the water based adhesive to the label to form a fastenable label, fastening the label to the container, and allowing the label to dry/cure on the container (Specification page 5, line 6 to page 6, line 10).

The rejection does not assert an admission in the prior art that the method of labeling using a water based adhesive is for any labels other than paper, e.g. specifically non-porous polymeric labels.

Appellants arguments regarding what has been asserted as an admission of prior art have been considered. However, the portions of the background of the invention argued by appellants were not used in the rejection as an admission regarding labeling with a water based adhesive. It was taken as admitted prior art that it was conventional to label a glass or plastic container with a paper based label by means of a water based adhesive using a labeling magazine and pallet for applying the adhesive which admission is found on page 5, line 6 to page 6, line 10 wherein paper based labeling with a water based adhesive is expressly described as “one of the most prevalent labeling techniques” that is “proven technology that has grown and been employed for

many years and consequently there are many existing machines that have been installed for this type of labeling technique such as from Krones, Neutraubling, Germany" (page 5, lines 6-19) which machines employ a magazine of precut labels and pallet for applying the adhesive (page 5, line 32 to page 6, line 10) "The various machine designs and techniques are well known within the labeling industry and to those skilled in the art. The "Krones Manual Of Labeling Technology" by Hermann Kronseder dated December 1978, is hereby incorporated by reference.".

Appellants further argue on page 8,

"The Malholtra patent mentions a filled polypropylene with microvoids that is used to make printable pressure laminated labels that are applied with a pressure sensitive adhesive. At col. 5, lines 44-60, it is clear that pressure sensitive adhesives are required by the Malholtra patent.".

Malhotra suggests a wide range of adhesives including those that are water based (Column 20, line 27 to Column 22, line 27). However, Malhotra is not applied to teach a water based adhesive. Malhotra is applied to show it was known in the labeling art that alternative label materials include paper, microvoided polymer, etc. Malhotra does not teach the selection of the particular label material is a function of the adhesive used rather Malhotra simply evidences the know equivalence in the labeling art of a number of base materials such as paper and microvoided polymer wherein the only preference shown is that a microvoided polymer generates a "never-tear paper" (Column 6, lines 30-64).

Appellants further argue on page 8,

"The Ito patent only discloses a voided material. There is no mention in Ito of what type of adhesive could or should be used if the product is used to make labels. None of the cited references address the problem solved by the present invention which is the labeling of plastic, glass or metal containers with a microvoided polymer using a water based adhesive. There was no suggestion in Ito that the voided property could be utilized

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to manage the water in a water based adhesive when the microvoided film was used a labeling material.”.

Ito discloses a label material used as a substitute for paper without expressly describing how the label is applied. Because the label material is used as a substitute for paper it would have been obvious for one of ordinary skill in the art to look to paper label based techniques for applying the label such conventional techniques evidenced by the admitted prior art. Further, while Ito may not expressly teach appellants same advantages for using a microvoided polymeric label Ito teaches a number of reasons the material is preferable to paper labels as more fully set forth above in the rejection.

Appellants further argue on page 10,

“Example 3 of Goebel was repeated and the results were presented in a Declaration of Leslie Fernandez that is of record in U.S. 6,663,746 and a copy has been filed in the present application. That Declaration provides data that shows that the label of Example 3 will not dry and the treated surface remains sticky like cellophane tape so that those individual labels will stick to one *another* and cannot be used in a labeling machine where they are stacked one upon another.”.

The declaration was considered. However, Gobel is not applied simply as a stack of labels. Gobel is applied in view of the admitted prior art whereby Gobel does not specifically require any technique for applying the water based adhesive to the label, and the admitted prior evidences conventional water based adhesive application was at the time of applying the label to a glass or plastic container to the label as fed from a label magazine such that the stack of labels taught by Gobel as modified by the admitted prior art is without the water based adhesive as yet applied.

Appellants further argue on page 10,

“The step of applying water or a water based adhesive to a microvoided polymeric patch label results in the migration of water into the microvoided material

because of the physical structure of the microvoided polymeric patch label which is porous and thus water will flow into this material. This concept is not disclosed by Goebel who only mentions a plastic foil (film) which is not porous. The density of the PVC film is not set forth in Goebel and nothing in Goebel suggests the use of a microvoided patch label that will allow a water based adhesive to migrate into the microvoided polymeric label.”.

Gobel teaches a paper or plastic label without limitation, and Gobel is modified by Malhotra or Ito to teach the claimed microvoided polymeric label.

Appellants further argue on page 12,

“Jannusch does not mention the use of *any* foamed plastic substrate as a label and makes no reference to the use of a heat shrinking technique in connection with the use of the *Jannusch* water based adhesive. Jannusch does not mention any type of a microvoided or foam label. Moreover, *Jannusch* is silent as to the use of any label substrate which allows water to migrate into the label. This ground of rejection was not applied to reject claim 50 which is directed to the labeling of plastic containers.”.

Jannusch discloses a water based adhesive which maintains a strong bond between a label and an object to which it is attached wherein the adhesive comprises gum, starch, casein, etc. and includes a crosslinking catalyst to provide a quick bond. Jannusch teaches the labels may be paper or plastic. It is noted none of the claims require a foamed plastic substrate or heat shrinking. Further, Jannusch was not applied to claim 50 as claim 50 does not require the adhesive comprise gum, starch, casein, etc. and a crosslinking catalyst.

Appellants further argue on page 12,

“The Jannusch patent is limited to a labeling system which must use a caustic sensitive labeling adhesive that contains an active metal such as aluminum. The metal component is added to make the adhesive debonding in the presence of a strong base. The labels that are disclosed in Example XIII, are paper and the only containers that are actually labeled are glass containers.”.

Jannusch teaches labeling glass or plastic containers with paper or plastic labels using the water based adhesive (Column 8, lines 28-42).

Appellants further argue on page 15,

"It is not seen that it is necessary to demonstrate that a label with a pressure sensitive adhesive or a sticky label will not feed from a magazine of a labeling machine because it is within the skill of the art to make this conclusion based on the established physical properties of the materials without jamming the label magazine of a labeling machine in an actual test. For these reasons, it is requested that this ground of rejection be reversed.".

Neither Gobel as modified by Malhotra or Ito and the admitted prior art nor Ito as modified by the admitted prior art and Gobel teach feeding the labels from the label magazine with the adhesive applied to the labels. The adhesive is not applied until application of the label to the container or surface as evidenced by the admitted prior art. None of the declarations submitted evidence that microvoided polymeric labels with only the hydrophilic coating thereon will not feed from a label magazine.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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